

Department of Legislative Services
2010 Session

FISCAL AND POLICY NOTE
Revised

House Bill 811
Judiciary

(Delegate Dumais, *et al.*)

Judicial Proceedings

**Child Protection - Reporting of Children Living with or in the Regular Presence
of Registered Child Sexual Offenders**

This bill authorizes an individual to notify the local department of social services or the appropriate law enforcement agency if the individual has reason to believe that a parent, guardian, or caregiver of a child allows the child to reside with or be in the presence of an individual, other than the child’s parent or guardian, who (1) is registered on the sexual offender registry based on the commission of an offense against a child; and (2) poses a substantial risk of sexual abuse to the child, based on additional information. The bill requires local departments to take specific actions upon the receipt of a report and conduct investigations if specified criteria are met.

Fiscal Summary

State Effect: None. Any increase in the workload for the Department of Human Resources (DHR) can be absorbed within existing budgeted resources. Any increase in the workload for the Judiciary as a result of additional Child in Need of Assistance (CINA) petitions is expected to be minimal and can be absorbed within existing budgeted resources. Revenues are not affected.

Local Effect: Any increase in the workload for law enforcement or the circuit courts can be absorbed within existing budgeted resources.

Small Business Effect: None.

Analysis

Bill Summary: The bill authorizes an individual to make an oral or written report. To the extent reasonably possible, an individual who makes a report must include information about the child, the child’s parents or caregivers, the circumstances that led

to the suspicion that the child is at substantial risk of sexual abuse, and any other information that would help to determine the cause of the substantial risk of sexual abuse and the individual responsible. If the person making the report is acting as a staff member at a hospital, public health agency, child care institution, juvenile detention center, school, or similar institution, the individual must immediately notify and give all required information to the head of the institution or that individual's designee. The bill extends the civil immunity that applies to individuals who make other reports of abuse and neglect to those who make reports of substantial risk of sexual abuse.

A local department or law enforcement agency may receive a report of substantial risk of sexual abuse. If a law enforcement agency receives a report, the agency must immediately refer the report to the local department. Within five days after receiving a substantial risk report, the local department and law enforcement agency must see the child, attempt an on-site interview with the caregiver and the registered individual, and decide on the safety and the level of risk to the child and other children in the care or custody of the registered individual.

A local department that receives a report must conduct a thorough investigation after confirming that the allegations in the report regarding the individual's history of sexual abuse are accurate and that there is specific information that the child is at substantial risk of sexual abuse. The investigation must be conducted in conjunction with an appropriate law enforcement agency. As part of the investigation, the local department must (1) determine whether the child is safe; (2) determine whether sexual abuse of the child has occurred; (3) offer appropriate services to the family; and (4) immediately decide whether to file a CINA petition. To the extent possible, an investigation must be completed as soon as practicable but no later than 30 days after receipt of a report.

The Secretary of Human Resources must adopt regulations governing (1) the definition of "substantial risk of sexual abuse"; and (2) how staff in a local department should elicit information from individuals who provide a report of substantial risk of sexual abuse.

Current Law: Statutory requirements regarding the reporting of child abuse apply if the reporter suspects that abuse has occurred. State law does not establish reporting requirements if a reporter believes that a child may be at substantial risk of sexual abuse. (See Family Law Article § 5-703.)

Health care practitioners, police officers, educators, and human service workers who are acting in a professional capacity and have reason to believe that a child has been subjected to abuse must notify the local department of social services or the appropriate law enforcement agency. If the worker is acting as a staff member of a hospital, public health agency, child care institution, juvenile detention center, school, or similar

institution, then the individual must notify the head of the institution or the designee. (See Family Law Article § 5-704.)

In general, a person other than a health care practitioner, police officer, educator, or human service worker who has reason to believe that a child has been subjected to abuse must notify the local department of social services or the appropriate law enforcement agency. Attorneys and clergy are generally exempt from reporting if they become aware of suspected abuse through privileged communications, as specified in statute. (See Family Law Article § 5-705.)

Within 30 days after completion of an investigation of child abuse in which there is a finding of either indicated or unsubstantiated abuse, the local department must notify the individual alleged to have abused the child of the finding and the opportunity to appeal the finding, as specified in statute. If the finding is for indicated abuse, the individual must also be notified that he/she is subject to identification in a central registry of individuals responsible for abuse. If the finding is for unsubstantiated abuse, an individual may request a conference with a supervisor in the local department by responding to the notice within 60 days. The individual has the right to review a summary of the conference and request a contested case hearing, as provided by statute. (See Family Law Article § 5-706.1.)

State and Local Fiscal Effect: The Department of Legislative Services advises that the requirements of this bill can be met with the existing resources of DHR, although it is anticipated that this bill may cause an increase in the workload of local departments of social services. The bill is expected to impact a relatively narrow population of individuals who will be referred to child protective services based on their abusive history or criminal background. Also, the bill requires that a very specific set of criteria be met in order for a local department to be required to conduct an investigation. Unlike prior introductions of similar bills, this bill does not require individuals to report on those who have committed crimes against children outside of Maryland or those who have committed violent crimes against children that are not child abuse or child sexual abuse. The bill also does not require the reporting of parents or guardians with an abusive or criminal history. DHR advises that the bill will have no fiscal impact on the department. Given that local departments likely already receive reports of children at substantial risk of sexual abuse and investigate claims that meet the threshold requirements of the bill, Legislative Services concurs with this assessment.

Additional Information

Prior Introductions: Similar bills have been introduced in recent years. SB 121 of 2009 received an unfavorable report from the Senate Judicial Proceedings Committee.

SB 241 of 2008 received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. Its cross file, HB 400, received an unfavorable report from the House Judiciary Committee. Similar bills were also introduced in the 2006 and 2007 sessions.

Cross File: Though not designated as a cross file, SB 559 (as amended) is identical to this bill.

Information Source(s): Caroline County, Calvert County, Prince George's County, City of Frederick, City of Glenarden, City of Havre de Grace, Town of Indian Head, Town of Rising Sun, Baltimore City, Department of Human Resources, Maryland Higher Education Commission, Department of Health and Mental Hygiene, Howard County, Judiciary (Administrative Office of the Courts), Montgomery County, Department of State Police, Department of Public Safety and Correctional Services, Department of Legislative Services

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